



U.S. Department of Justice

Immigration and Naturalization Service

CC

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



FILED

Date: JUN 9 2000

IN RE

APPLICATION:



IN BEHALF OF APPLICANT: Self-represented

RECEIVED
JUN 14 2000

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

Identifying data related to
prevent clearly unwarranted
invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, San Francisco, California, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant filed the above application seeking to preserve his residence for naturalization purposes under § 317 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1428, as a lawful permanent resident who will be absent from the United States for the purpose of employment to perform ministerial or priestly functions abroad.

The district director determined that the applicant was not eligible for preservation of residence for naturalization purposes because he was not performing ministerial, priestly or missionary duties as specified under § 317 of the Act.

On appeal, the applicant states that the Service's decision is incomplete, arbitrary, superfluous and discriminatory.

Section 317 of the Act provides, in part, that:

Any person who is authorized to perform ministerial or priestly functions of a religious denomination having a bona fide organization within the United States, or any person who is engaged solely by a religious denomination or by an interdenominational mission organization having a bona fide organization within the United States as a missionary, brother, nun or sister, who

(1) has been lawfully admitted to the United States for permanent residence,

(2) has at any time thereafter and before filing an application for naturalization been physically present and residing within the United States for an uninterrupted period of at least one year, and

(3) has heretofore been or may hereafter be absent from the United States in connection with or for the purpose of performing the ministerial or priestly functions of such religious denomination, or serving as a missionary, brother, nun, or sister,

shall be considered as being physically present and residing in the United States for the purposes of naturalization within the meaning of § 316(a), notwithstanding any such absence from the United States, if he shall in all other respects comply with the requirements of the naturalization law. Such person shall prove to the satisfaction of the Attorney General that his absence from the United States has been solely for the purpose of performing the ministerial or priestly functions of such religious denomination, or of serving as a missionary, brother, nun, or sister.

Under the present statute, a person in the above category who is absent from the United States in the religious capacity described above will be considered as physically present and residing in the United States during such absence for naturalization purposes if the following conditions are met in sequence.

(1) After a lawful admission for permanent residence, the applicant must, at any time before filing a petition for naturalization, have been physically present and residing within the United States for an uninterrupted period of at least one year. Unlike the general class of approvable absences, this applicant's one-year residence need not precede the departure from the United States.

(2) The applicant must have been absent from the United States temporarily to perform the religious duties described above.

(3) The applicant must prove to the satisfaction of the Attorney General that the absence from the United States was solely for the purpose of performing such duties and that the absence from the United States for the period in question was for the prescribed employment and purpose.

The applicant was lawfully admitted for permanent residence on August 15, 1990. He was last absent from the United States from August 2, 1996 to August 14, 1998 and he filed his application on December 11, 1998. According to the record, the applicant was employed by the Ford Foundation as a visiting professor and university fellow for the successful implementation and monitoring of programs und the Ford foundation.

The applicant is not eligible for the benefits of § 317 of the Act because his duties are not solely religious in nature. However, 8 C.F.R. 316.20(a) lists the Ford Foundation as an American institution of research recognized by the Attorney General. therefore, the application will also be considered under § 316 of the Act, 8 U.S.C. 1427.

Section 316(b) of the Act provides that:

Absence from the United States of more than six months but less than one year during the period for which continuous residence is required for admission to citizenship, immediately preceding the date of filing the application for naturalization, or during the period between the date of filing the application and the date of any hearing under § 336(a) of the Act, shall break the continuity of such residence, unless the applicant shall establish to the satisfaction of the Attorney General that he did not in fact abandon his residence in the United States during such period.

Absence from the United States for a continuous period of one year or more during the period for which continuous residence is required for admission to citizenship (whether preceding or subsequent to the filing of the

application for naturalization) shall break the continuity of such residence except that in the case of a person who has been physically present and residing in the United States after being lawfully admitted for permanent residence for an uninterrupted period of at least one year and who thereafter, is employed by or under contract with the Government of the United States or an American institution of research recognized as such be the Attorney General, or is employed by an American firm or corporation engaged in whole or in part in the development of foreign trade and commerce of the United States, or a subsidiary thereof more than 50 % of whose stock is owned by an American firm or corporation, or employed by a public international organization of which the United States is a member by treaty or statute and by which the alien was not employed until after being lawfully admitted for permanent residence, no period of absence from the United States shall break the continuity of such residence if--

(1) prior to the beginning of such period of employment (whether such period begins before or after his departure from the United States), but prior to the expiration of one year of continuous absence from the United States, the person has established to the satisfaction of the Attorney General that his absence from the United States for such period is to be on behalf of such Government, or for the purpose of carrying on scientific research on behalf of such institution, or to be engaged in the development of such foreign trade and commerce or whose residence abroad is necessary to the protection of the property rights in such countries of such firm or corporation, or to be employed by a public international organization of which the United States is a member by treaty or statute and by which the alien was not employed until after being lawfully admitted for permanent residence; and

(2) such person proves to the satisfaction of the Attorney General that his absence from the United States for such period has been for such purpose.

8 C.F.R. 316.5(d) provides in part that an applicant for residence benefits under § 316(b) of the Act to cover an absence from the United States for a continuous period of one year or more shall be submitted on Form N-470 and may be filed either before or after the applicant's employment commences, but must be filed before the applicant has been absent from the United States for a continuous period of one year.

The record reflects that the applicant was absent from the United States for a continuous period of two years from August 2, 1996 to

August 14, 1998 and he filed the present application on December 11, 1998. Therefore, pursuant to 8 C.F.R. 316.5(d), the applicant is ineligible for the benefit under § 316(b) of the Act.

This decision is without prejudice to the applicant seeking U.S. citizenship under regular naturalization procedures.

ORDER: The appeal is dismissed.